

No. 15142

United States
Court of Appeals
for the Ninth Circuit

LEETA A. LLOYD,

Appellant,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States District Court, Northern District of
California, Southern Division

No. 34715

LEETA A. LLOYD,

Plaintiff,

vs.

THE FRANKLIN LIFE INSURANCE COM-
PANY, a Corporation,

Defendant.

COMPLAINT BY BENEFICIARY FOR
AMOUNTS PAYABLE UNDER A LIFE
INSURANCE POLICY

Plaintiff, Leeta A. Lloyd, complains of defendant,
The Franklin Life Insurance Company, a corpora-
tion, and for cause of action alleges that:

I.

Plaintiff is a citizen of the State of California,
and defendant is a corporation incorporated under
the laws of the State of Illinois. The matter in con-
troversy exceeds, exclusive of interest and costs, the
sum of Three Thousand (\$3,000.00) Dollars.

II.

Heretofore defendant issued a policy of life in-
surance on the life of Warren William Lloyd bear-
ing number 112 7042; that said policy was issued
by defendant, and delivered to said Warren Wil-
liam Lloyd by an agent of defendant duly author-
ized therefor in the State of California.

Plaintiff is the beneficiary named in that policy. The said Warren William Lloyd died December 21, 1954, and at that time said policy was in full force and effect.

III.

The said Warren William Lloyd was born May 14, 1920.

IV.

By the terms of that policy, in the part designated Double Benefit, defendant promised and agreed to pay to plaintiff the sum of Three Thousand (\$3,000.00) Dollars upon the death of the said Warren William Lloyd, in accordance with certain optional methods of settlement. Plaintiff elects option one and to receive the said Three Thousand (\$3,000.00) Dollars in one year in one sum.

V.

Defendant further agreed by the terms of said policy, in that part thereof denominated Supplemental Agreement, to pay to plaintiff the further and additional sum of Ninety-four Hundred (\$9,400.00) Dollars upon the death of said Warren William Lloyd.

VI.

Defendant has denied all liability on said policy and has refused to pay part of the said sum of Three Thousand (\$3,000.00) and has refused to pay any part of said sum of Ninety-four Hundred (\$9,400.00) Dollars. Defendant has offered to repay to plaintiff the premiums which defendant alleges were paid for that policy. Plaintiff rejects that

offer and does hereby offer to return to defendant the check mailed to plaintiff in the amount which defendant alleges is the amount of premiums paid for said policy. Said check is number 113689, is drawn by defendant payable to plaintiff, is dated January 26, 1955, and is in the amount of Two Hundred Eighty-eight Dollars and Thirty-two Cents (\$288.32).

Wherefore, Plaintiff prays for judgment against defendant as follows:

1. Under the Double Benefit part of said policy, the sum of Three Thousand (\$3,000.00) Dollars, plus interest thereon as provided by law.

2. Under the Supplemental Agreement part of said policy the sum of Ninety-four Hundred (\$9,400.00) Dollars plus interest thereon as provided by law.

3. For costs and for such general relief as may be proper.

Dated at Los Gatos, California, June 14, 1955.

NEIL CUNNINGHAM,
C. W. RICKETTS,
Attorneys for Plaintiff,

By /s/ C. W. RICKETTS.

Duly verified.

[Endorsed]: Filed June 20, 1955.

[Title of District Court and Cause.]

ANSWER

Defendant, for its answer:

First Defense

1. Admits the allegations of paragraphs I and II.

2. Admits the allegations of paragraph III except states it is without knowledge or information sufficient to form a belief as to the birth date of the insured.

3. Denies each and every allegation of paragraphs IV and V except admits that on January 5, 1953, it issued its policy number 1127042, copy of which is attached hereto as Exhibit A.

4. Admits the allegations of paragraph VI except denies that it has denied all liability under said policy and alleges that its liability is restricted to the amount of premiums paid under said policy.

Second Defense

Alleges that the complaint fails to state a claim upon which relief can be granted.

Third Defense

1. Alleges that on January 5, 1953, it issued its insurance policy number 1127042, copy of which is attached hereto as Exhibit A, to take effect as of January 1, 1953.

2. Alleges that said policy provides:

“Suicide: If within two years from date of issue the Insured (whether sane or insane) shall die by self-destruction, the liability of the Company shall be restricted to the amount of premiums paid hereon.”

3. Alleges that it fixed the effective date of issue of said policy in accordance with the special request of the insured contained in his application for said policy, copy of which application is a part of Exhibit A.

4. Alleges that the insured died by self-destruction on December 21, 1954.

5. Alleges that such death occurred within two years of January 1, 1953, the date of issue of said policy.

Wherefore, defendant demands judgment: (1) dismissing the complaint; (2) for costs and disbursements; and (3) for such other and further relief as may be deemed proper.

August 1, 1955.

McCUTCHEN, THOMAS, MATTHEW, GRIFFITHS & GREENE,

/s/ MORRIS M. DOYLE,

/s/ BERNARD PETRIE,

Attorneys for Defendant.

EXHIBIT A

[Stamped]: Specimen—No. 1127042.

The Franklin Life Insurance Company
Springfield, Illinois

Name of Insured: Warren William Lloyd.

Age of Insured: 33.

Double Benefit: Three Thousand Dollars.

Principal Sum Insured: One Thousand Five
Hundred Dollars.

Annual Premium: \$136.63.

Premiums Payable During: Lifetime of the Insured.

First Policy Year Begins: January 1, 1953.

Beneficiary: Leeta A. Lloyd, Wife.

The Franklin Life Insurance Company agrees to pay the Double Benefit under the conditions hereof to the beneficiary upon receipt of due proof of the death of the Insured if the Insured shall die before the end of the policy year on which the Insured's age nearest birthday is 65 years (which is the end of the Double Benefit period). If the Insured shall die after the end of the Double Benefit period, the amount payable to the beneficiary upon receipt of due proof of the death of the Insured will be the Principal Sum Insured.

This Policy is issued and accepted subject to all the conditions, benefits and privileges set forth on the subsequent pages hereof, which are hereby made a part of this Contract.

In Witness Whereof, The Franklin Life Insurance Company has caused this Policy to be executed at Springfield, Illinois, January 5, 1953.

/s/ CHARLES E. DECKER,
President.

/s/ GEORGE E. HATMAKER,
Secretary.

Countersigned:

.....,
Registrar.

Preferred Risk—Ordinary Life
Double Insurance to Age 65

Participating—Annual Dividends
Premiums payable for Life

With Additional Insurance for Mortgage Liquidation Double Indemnity—Waiver of Premium Disability.

Form 908

Consideration: This insurance is granted in consideration of the application herefor and of the payment in advance of the premiums as herein provided. The first premium in the amount specified on the first page, is payable at the beginning of the first policy year and subsequent premiums are paya-

ble on the anniversary of said date in every year thereafter until premiums have been paid for the period specified on the first page.

Premiums: This Policy is based upon the payment of premiums annually in advance but premiums for the first and subsequent policy years may be paid semi-annually or quarterly in advance or, at the option of the Company, they may be paid monthly in advance. Each semi-annual, quarterly or monthly premium shall be in accordance with the rates in use by the Company at date of issue hereof. Premiums are payable at the Home Office of the Company in the City of Springfield, Illinois, or to an authorized agent in exchange for the Company's receipt therefor, signed by the President or Secretary, and countersigned by such authorized agent. Failure to pay any premium when due shall cause this Policy to cease and determine except as herein otherwise provided, and all payments made hereon shall remain the property of the Company.

Grace Period: A grace period of thirty-one days, without interest charge, will be allowed for the payment of every premium after the first, during which period this Policy shall remain in force. If death occurs within the grace period, the premium, if unpaid, will be deducted from the amount payable hereunder.

Reinstatement: This Policy may be reinstated (unless previously surrendered to the Company) at any time within five years after default in payment of any premium after the first upon written

application to the Company and presentation at the Home Office of evidence of insurability of the Insured satisfactory to the Company and payment of all past due premiums with interest thereon at the rate of 5% per annum from their respective due dates. Any indebtedness hereon at date of such premium default, with interest from such date according to the terms of the obligation therefor, shall be restored and be a first lien against this Policy; provided, however, that the excess, if any, of such indebtedness over the loan value of this Policy as at date of reinstatement shall be repaid forthwith.

Incontestability: After two years from date of issue this Policy shall be incontestable except for failure to pay premium when due and except for violation of the conditions of this Policy relating to military or naval service in time of war if such service shall be restricted by rider attached hereto at date of issue; provided, however, that the provisions for disability benefits and double indemnity benefits, if any, attached to or incorporated in this Policy shall become void and cease to be in force for the causes and under the conditions as stated therein.

Suicide: If within two years from date of issue the Insured (whether sane or insane) shall die by self-destruction, the liability of the Company shall be restricted to the amount of premiums paid hereon.

Beneficiary: The Beneficiary is the party designated to receive the death benefit. Unless otherwise

stated, the relationship of the Beneficiary is the relationship to the Insured. Unless otherwise provided herein, if any Beneficiary is designated as primary or contingent, the death benefit hereunder shall be payable in equal shares to such primary Beneficiaries as are living at the death of the Insured, or if no primary Beneficiary is then living, the death benefit shall be payable in equal shares to the then surviving first contingent Beneficiaries, but if no first contingent Beneficiary is then living, the death benefit shall be payable in equal shares to the then surviving second contingent Beneficiaries. If no Beneficiary shall survive the Insured, the Policy shall be payable to the Insured's executors, administrators or assigns. As to any facts relating to the identity or dates of birth and death of any Beneficiary hereunder, the Company may rely upon evidence by affidavit or otherwise, and any payment made in reliance thereon shall relieve the Company of its liability to the extent of such payment. To the extent permitted by law, the proceeds hereof at the death of the Insured shall not be subject to transfer or encumbrances by any Beneficiary and shall not be subject to the claims of creditors of any Beneficiary not to any legal process against any Beneficiary. Subject to the rights of any assignee, any Beneficiary named herein may be changed at any time during the continuance of this Policy by filing at the Home Office of the Company a written request therefor. Such change shall take effect only upon its endorsement on the Policy by the Company

at its Home Office but upon such endorsement the change will relate back to, and take effect as of, the date said written notice of change was signed whether the Insured be living at the time of such endorsement or not, but without prejudice to the Company on account of any payments made by it before receipt of such written notice at its Home Office.

Modification: Only the President or Secretary has power in behalf of the Company (and then only in writing) to make or modify this or any contract of insurance, or to extend the time for paying any premium, and the Company shall not be bound by any promise or representation heretofore or hereafter given by any agent or person other than the above.

Age: If the age of the Insured is misstated, the amount payable hereunder shall be such as the premium paid would have purchased under this Policy at the true age of the Insured.

Assignment: No assignment of this Policy shall be binding upon the Company unless filed in duplicate at the Home Office, one to be retained by the Company and the other to be returned. The Company assumes no responsibility for the validity of any assignment.

Indebtedness: This Policy is payable at the Home Office of the Company in Springfield, Illinois. Before any amount shall be paid hereunder, proof of the interest of the claimant must be furnished

and any indebtedness hereon to the Company must be settled.

Entire Contract: This Policy and the application therefor, a copy of which is hereto attached and made a part hereof, constitute the entire contract between the parties. All statements made by the Insured or on his behalf shall, in the absence of fraud, be deemed representations and not warranties, and no such statements shall be used in defense to a claim under this Policy unless it is contained in the application and a copy of the application is attached to this Policy when issued.

Automatic Premium Loan: If proper written request for the operation of this provision has been received at the Home Office of the Company before default in payment of any premium or within the grace period, any premium due on this Policy remaining unpaid on the last day of grace for payment of same will be advanced by the Company, provided the cash value of this Policy at the end of the period which such premium would cover exceeds the total indebtedness to the Company hereon by an amount sufficient to pay such premium with interest thereon. The amount of such advanced premium with interest thereon at the rate of 5% per annum to the next succeeding anniversary of this Policy shall constitute a loan against this Policy and thereafter such loan shall bear interest at the rate of 5% per annum payable in advance. If such interest is not paid when due it shall be added to such loan and bear interest at the same rate. If the

cash value of this Policy at the end of any period for which a premium is due and unpaid does not exceed the total indebtedness hereon by an amount sufficient to pay such premium with interest thereon, then such due and unpaid premium shall not be advanced as a loan but the provision of this Policy entitled "Non-forfeiture" shall apply. The Company shall have a prior lien on this Policy and its proceeds for any loans made hereunder together with interest thereon. At any time before default in payment of premium, the payment of premiums in cash to the Company may be resumed in accordance with the provisions of this Policy. The request for the operation of this provision may be revoked at any time by proper written request to the Company at its Home Office, provided, however, that such revocation shall not affect any loan which may have been previously made hereunder.

Loans: Loans may be obtained on the sole security of this Policy at any time that a cash surrender value is available and while the Policy is in force otherwise than as extended insurance. The loan may be for any amount which with interest to the end of the current policy year shall not exceed the cash value at the end of such policy year. Loans will be made upon execution of a proper loan agreement and assignment of this Policy and presentation of this Policy at the Home Office of the Company for endorsement or deposit as the Company may require. Any existing indebtedness on this Policy and any unpaid balance of the premium for

the current policy year shall be deducted by the Company from the proceeds of the loan. Interest on the loan shall be at the rate of 5% per annum payable in advance to the end of the current policy year and annually in advance thereafter, and if any interest is not paid when due it shall be added to the existing loan and shall bear interest at the same rate. The whole or any part of any indebtedness may be repaid at any time before default in payment of premium. Failure to repay any loan or to pay interest thereon shall not avoid this Policy unless the total indebtedness shall equal or exceed the loan value of this Policy nor until thirty-one days after notice to that effect shall have been mailed by the Company to the last known address of the Insured, and any Assignee of record at the Home Office of the Company.

Deferment: The Company reserves the right to defer the payment of any cash value or the granting of any loan hereunder, unless for the purpose of paying premiums due under any policies in the Company, for the period permitted by law but not to exceed six months after written request is received by the Company at its Home Office.

Reserve Basis: The reserves on this Policy shall be computed by the Commissioners Reserve Valuation Method and the Commissioners 1941 Standard Ordinary Mortality Table with 3% interest. The values shown in the Table of Non-Forfeiture and Loan Values for the third and subsequent years and the values for the years subsequent to the 20th

policy year, if the policy continues in force for more than twenty years, are equal to said reserve less an amount not exceeding $2\frac{1}{2}\%$ of the amount insured. At the end of the premium paying period and thereafter the cash value shall be equal to said reserve.

Control: Unless otherwise provided in the application herefor, or by endorsement hereon, and subject to the rights of any assignee of record with the Company, and insofar as the laws of the State governing this Policy allow, the Insured during his lifetime may assign or surrender this Policy and exercise, receive and enjoy every other right, benefit or privilege contained in this Policy, or agree with the Company to any change in or amendment to this Policy, without the consent or joinder of any beneficiary.

Annual Dividends: At the end of the second and each succeeding policy year, this Policy, while in full force or while being continued as Paid-Up Life or Endowment insurance under the Non-Forfeiture Provision, shall be credited with such share of the divisible surplus from the participating business as determined and apportioned by the Company. Such dividends shall, at the option of the Insured, be

1. Used to reduce the cost, either (a) by withdrawal in cash, or (b) by application toward payment of premiums; or,

2. Left to accumulate as an interest-bearing savings fund at such rate of interest as may be determined from time to time by the Company, but guar-

anteed to be not less than 3% per annum compounded on an annual basis. Unless previously applied in accordance with the Non-Forfeiture Provision hereof, such accumulated dividends shall be payable at the maturity of this Policy but withdrawable on demand; or,

3. Applied to increase the amount of insurance by the purchase of paid-up participating additions to this Policy, and unless previously applied in accordance with the Non-Forfeiture Provisions hereof, such paid-up additions may be surrendered at any time for their cash value which shall be equal to the then present value of the guaranteed benefits provided thereunder but not less than the amount of dividends applied to purchase such additions; or

4. Applied to convert this policy into a fully paid-up participating policy, or to mature this Policy as an endowment, or to shorten the endowment period of this Policy.

Whenever the cash value of this Policy and any existing paid-up additions plus the dividend accumulations equal the net single premium (calculated on the same basis as the premium for this Policy) at the then attained age of the Insured for a fully paid-up participating policy of the same kind and amount insured as this Policy, the Company will, upon written request and proper release of the paid-up additions and dividends accumulations, convert this Policy into such a fully paid-up participating policy. Any indebtedness outstanding

against this Policy will continue as a lien against the paid-up policy.

Whenever the cash value of this Policy and of any existing paid-up additions together with any dividend accumulations equal the amount insured under this Policy, the Company will upon due surrender of this Policy and release of such paid-up additions and dividend accumulations pay the amount insured under this Policy less any existing indebtedness to the Company thereon.

Unless the Insured shall elect otherwise, within thirty-one days after any dividend is due, the dividend shall be applied to the purchase of a paid-up participating addition to the amount insured, or applied under such other automatic options as may be required by the laws of the State in which this Policy is delivered.

Non-Forfeiture: In event of default in payment of premium, one of the following benefits shall apply:

1. **Automatic Extended Insurance:** This Policy will, without action of the Insured or payment of further premiums, be continued as non-participating paid-up term insurance without loan values, for the principal sum insured, increased during such part of the paid-up term period as falls within the double benefits period specified on the first page hereof by an additional sum equal to the principal sum insured, for such a period reckoning from the due date of the unpaid premium as the then cash value of this Policy will purchase at the Insured's

then attained age at net single premium rates by the Commissioners 1941 Standard Ordinary Mortality Table with interest at the rate of 3% per annum. If this Policy is being continued as extended insurance which became effective at the end of the third or any subsequent policy year, then the Company will pay, upon legal surrender of this Policy within thirty days after the end of any policy year, a cash surrender value equal to the full reserve according to the mortality table and interest rate specified in this paragraph for the unexpired period of such paid-up term insurance.

2. Paid-Up Insurance: In lieu of the paid-up term insurance provided for in paragraph 1 above, upon the Insured's written request and legal surrender of this Policy within sixty days from the due date of the unpaid premium, the Company will issue a participating paid-up life policy for such amount as the then cash value of this Policy will purchase at the Insured's then attained age at net single premium rates by the Commissioners 1941 Standard Ordinary Mortality Table with interest at the rate of 3% per annum. For any paid-up life insurance which is issued under this provision at the end of the third or any subsequent policy year, the Insured may obtain a loan of an amount not greater than the reserve for such paid-up life insurance, subject to the loan provisions thereof, or may surrender such insurance within thirty days after the end of any policy year for its reserve according to the mortality table and interest rate specified in this paragraph and less any indebtedness hereon.

3. **Cash Surrender Value:** In lieu of the paid-up term insurance provided for in paragraph 1 above, upon the Insured's written request and legal surrender of this Policy within sixty days from the due date of the unpaid premium, the Company will pay the cash value hereinafter specified. If this Policy shall have become paid-up by completion of all premium payments, then upon the Insured's written request and legal surrender of this Policy within thirty days after the end of any policy year, the Company will pay the cash value hereinafter specified.

4. **Basis of Cash Value:** The cash value at the end of any policy year is computed as the excess of the then present value of the life insurance benefits provided by this Policy, assuming all death claims payable at the end of the policy year of death, over the then present value of an annual amount for the remaining period during which premiums are payable under this Policy, all on the basis of the Commissioners 1941 Standard Ordinary Mortality Table with interest at the rate of 3% per annum, which annual amount is equal to the net level premium applicable to this Policy on said basis, multiplied by the non-forfeiture factor which is set forth in the Table of Non-Forfeiture Factors below. Such excess shall be increased by the present value of any dividend additions and any dividend accumulations and shall be decreased by any indebtedness to the Company hereon. The net value of any dividend additions shall be not less than the dividends used to

purchase such additions. The life insurance benefits specified herein shall not include (a) any provision for total and permanent disability or for additional benefits, if any, for death by accidental means, or, (b) any decreasing term insurance benefits provided by a rider attached to and forming a part of this Policy.

5: Explanation of Table of Non-Forfeiture and Loan Values: The values shown in the Table of Non-Forfeiture and Loan Values hereof are for completed policy years and are computed on the assumption that the Policy has been in force and premiums duly paid for the number of years stated, and that there are no paid-up additions or dividend accumulations credited to this Policy and that there is no indebtedness to the Company hereon. The tabular amounts of paid-up and extended insurance are equal in value to the corresponding cash values. If the premiums on this Policy shall be paid other than annually, due allowance will be made in computing cash and non-forfeiture values for that portion of the policy year for which premiums shall have been paid. If this Policy continues beyond the last policy year for which values are shown in such table, values for such year shall be computed on the same basis as above provided and will be furnished upon request. The cash surrender values and paid-up non-forfeiture benefits available under this Policy are not less than the minimum values and benefits required by or pursuant to any applicable statute of the State in which the policy is delivered.

Table of Non-Forfeiture Factors

	Factor	Age	Factor	Age	Factor	Age	Factor	Age	Factor
5	1.108422	26	1.092685	37	1.083251	48	1.081229	59	1.070819
6	1.106747	27	1.091558	38	1.082734	49	1.081492	60	1.069623
7	1.105117	28	1.090481	39	1.082280	50	1.081841	61	1.068474
8	1.103538	29	1.089458	40	1.081887	51	1.082145	62	1.067368
9	1.102008	30	1.088488	41	1.081559	52	1.080547	63	1.066306
0	1.100525	31	1.087573	42	1.081297	53	1.079004	64	1.065286
1	1.099092	32	1.086712	43	1.081104	54	1.077513	65	1.064307
2	1.097710	33	1.085906	44	1.080979	55	1.076075		
3	1.096378	34	1.085155	45	1.080927	56	1.074687		
4	1.095097	35	1.084463	46	1.080949	57	1.073349		
5	1.093865	36	1.083827	47	1.081049	58	1.072060		

Total Disability Benefit—Waiver of Premiums

Supplemental Agreement attached to and forming
part of the Policy described herein.

Policy Number: 1127042.

Name of Insured: Warren William Lloyd.

Extra Annual Premium: \$4.88 for twenty years and
\$2.48 thereafter.

If Due Proof shall be furnished to The Franklin Life Insurance Company at its Home Office that, after the payment of the first premium on said Policy, and before default in payment of any subsequent premium, and before the anniversary of said Policy on which the Insured's age at nearest birthday is sixty years, the Insured has become totally disabled, as the result of bodily injury or disease occurring after the issuance of said Policy,

so that the Insured is and will be continuously and wholly prevented thereby from performing any work or transacting any business for compensation or profit and that such disability has already continued uninterruptedly for a period of at least six months (such disability of such duration being treated as permanent only for the purpose of determining the commencement of the benefit hereunder) the Company will during the continuance of such disability grant the following benefit:

Waiver of Premium: The Company agrees to waive the payment of each premium becoming due under said Policy after the commencement of such disability, provided however, that no premium shall be waived, the due date of which is more than six months prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. Any premiums so waived shall not be deducted from the sum payable in any settlement of said Policy. During the continuance of disability the manner of premium payments may not be changed.

Recognized Disabilities: It is further agreed that the entire and irrecoverable loss of sight of both eyes, or the total and permanent loss by accident or disease of the use of both hands, or of both feet, or of one hand and one foot, will be treated in the same manner as total disability within the operation of this Agreement.

Requirements for Due Proof: In case any premium under said Policy is in default before receipt

at the Home Office of the Company of written notice of claim hereunder, waiver of premium hereunder shall be made only if such notice is received within six months of the due date of the first premium in default, and either (a) the total disability for which claim is made commenced prior to the due date of the first premium in default, or (b) the total disability for which claim is made commenced subsequent to the due date of the first premium in default, but within the grace period allowed by said Policy for payment of such premium, in which case, however, the Insured shall be liable to the Company for such premium in default with interest at 5% per annum, which amount may be deducted from any payments due under said Policy.

Written notice of claim hereunder must be presented to and received at the Home Office of the Company (a) during the lifetime of the Insured and (b) during the continuance of total disability, otherwise the claim shall be invalid. Failure to give such notice within such times shall not invalidate any such claim if it shall be shown that it was not reasonably possible to give such notice within such times and that such notice was given as soon as was reasonably possible.

Recovery from Disability: Notwithstanding that proof of disability may have been accepted by the Company as satisfactory, the Company may from time to time demand due proof of the continuance of such disability and shall be permitted, as often as it may require, to have a physical examination

of the Insured made with respect to such disability by a medical examiner designated by it. After such disability has continued for two full years the Company will not demand such proof more often than once a year. If the Insured shall fail to furnish such proof, or refuse to permit such physical examination, or shall become able to perform any work or engage in any business or occupation whatsoever for compensation or profit, waiver of premium hereunder provided shall immediately cease and all premiums thereafter falling due shall be payable according to the terms of said Policy.

Risks Not Assumed: The benefit herein provided shall not be granted if disability shall result (a) from intentional self-inflicted injury, or (b) from the special hazards incident to service in the military, naval or air forces of any country, combination of countries or international organization at war, whether such war be declared or undeclared, or (c) from an act of war or act attributable to war whether such war be declared or undeclared.

Termination: This Agreement for disability benefit shall automatically terminate, (a) if any change is made in the plan or principal sum insured of said Policy, except that in such event a new disability Agreement may, at the option of the Company be attached to the re-written Policy, subject to the adjustment of the premium therefor, or (b) if said Policy shall by reason of default in payment of premium be continued in force under any non-forfeiture

ture provision thereof. Upon written request by the Insured, accompanied by said Policy for endorsement, this Agreement for disability benefit may be discontinued.

Premiums: The extra annual premium for this Supplemental Agreement is included in the premium stated in said Policy. This extra premium will not be payable on or after the anniversary of said Policy on which the Insured's age at nearest birthday is sixty years, or after this Agreement for disability benefit has been terminated or discontinued as above provided. Any extra premium, or part thereof, paid under this Supplemental Agreement for any period subsequent to the termination hereof will be refunded.

In Witness Whereof The Franklin Life Insurance Company has caused this Supplemental Agreement to be executed at Springfield, Illinois, concurrently with said Policy to which it is attached.

/s/ CHARLES E. DECKER,
President.

/s/ GEORGE E. HATMAKER,
Secretary.

Countersigned:

.....

Registrar.

Double Indemnity—Accidental Death Benefit
Supplemental Agreement attached to and forming
part of the Policy described herein.

Policy Number: 1127042.

Name of Insured: Warren William Lloyd.

Accidental Death Benefit: \$3,000.00.

Extra Annual Premium: \$4.50.

Benefit: Subject to the provisions and exceptions herein contained, The Franklin Life Insurance Company will pay

An Accidental Death Benefit

of the amount stated above in addition to the amount payable upon the death of the Insured as provided in said Policy provided however, the amount payable shall be Two Hundred Fifty Dollars (\$250) for each One Thousand Dollars (\$1,000) of Accidental Death Benefit set forth above if the death of the Insured shall occur (1) during the period covered in any Short Term Insurance Agreement attached to said Policy when the Insured's age at the beginning of said Short Term Insurance period is less than six months, or (2) during the first policy year of said Policy if the Insured is under the age of one year nearest birthday at the beginning of said policy year.

Such Accidental Death Benefit shall be due and payable only if the Company shall receive due proof: (1) that such death occurred while said

Policy was in force and there was no default in the payment of any premium thereunder; (2) that the death of the Insured resulted, directly and independently of all other causes, from bodily injuries effected solely through external, violent and accidental means; (3) that there was evidence of such injuries by a visible contusion or wound on the exterior of the body, except in case of drowning or of internal injuries revealed by an autopsy; (4) that such death occurred prior to the anniversary of said Policy on which the Insured's age nearest birthday was sixty years and within ninety days from the date of the accident. The Company, before making any payment hereunder, shall have the right and opportunity to examine the body and make an autopsy, unless forbidden by law.

Risks Not Assumed: This Accidental Death Benefit shall not be payable if the death of the Insured shall result either directly or indirectly from, (1) self-destruction, whether sane or insane, or (2) committing or attempting to commit an assault or felony, or (3) participating in a riot or insurrection, or (4) the special hazards incident to service in the military, naval or air forces of any country, combination of countries, or international organization at war, whether such war be declared or undeclared, or (5) an act of war or act attributable to war whether such war be declared or undeclared, or (6) operating, riding in or descending from any kind of aircraft, whether as a passenger or otherwise, except riding as a fare-paying passenger in a

licensed passenger aircraft provided by an incorporated passenger carrier on a scheduled passenger air service regularly offered over an established passenger route, or (7) being or having been in or on any submarine vessel, or (8) bodily or mental infirmity or illness or disease of any kind, or (9) any poison, gas or fumes, voluntarily or involuntarily, accidentally or otherwise taken, administered, absorbed or inhaled, or (10) infection, other than infections occurring simultaneously with and in consequence of an accidental cut or wound, or (11) if the death of the Insured shall occur while any premium is being waived under any disability benefit attached to or incorporated in said Policy.

Termination: This Supplemental Agreement shall immediately terminate, (1) if any change shall be made in the plan or principal sum insured of said Policy, except that in such event a new Agreement for Double Indemnity may, at the option of the Company, be attached to the rewritten Policy, subject to an adjustment of the premium therefor, or (2) if said Policy shall by reason of default in payment of premium be continued in force under any non-forfeiture provision thereof. Upon written request by the Insured, accompanied by said Policy for endorsement, this Agreement for Accidental Death Benefit may be discontinued.

Premiums: The extra annual premium for this Supplemental Agreement is included in the premium stated in said Policy. Any premiums payable under said Policy on or after the anniversary

thereof on which the Insured's age at nearest birthday is sixty years, or after this Supplemental Agreement has been terminated shall be reduced by the amount of said extra premium. Any extra premium, or part thereof, paid under this Supplemental Agreement for any period subsequent to the termination hereof will be refunded.

In Witness Whereof The Franklin Life Insurance Company has caused this Supplemental Agreement to be executed at Springfield, Illinois, concurrently with said Policy to which it is attached.

/s/ CHARLES E. DECKER,
President.

/s/ GEORGE E. HATMAKER,
Secretary.

Countersigned:

.....

Registrar.

Provision for Additional Insurance Adapted to
Mortgage Redemption Purposes.
20 Year Plan

Supplemental Agreement attached to and forming part of Policy No. 1127042 issued by The Franklin Life Insurance Company on the life of Warren William Lloyd, the Insured.

If the Insured shall die prior to the end of the twentieth policy year of said Policy, and while said

policy and this Supplemental Agreement are in full force, then upon receipt by the Company of due proofs of the death of the Insured the Company will pay to the Beneficiary in addition to the principal sum insured stated on Page 1 of said Policy—10.0—times the amount specified in the following table for the policy year in which death occurs.

Policy Year	Additional Insurance	Policy Year	Additional Insurance	Policy Year	Additional Insurance	Policy Year	Additional Insurance	Policy Year	Additional Insurance
1	\$1000	5	\$880	9	\$735	13	\$580	17	\$420
2	970	6	840	10	700	14	540	18	380
3	940	7	805	11	660	15	500	19	340
4	910	8	770	12	620	16	460	20	300

This Supplemental Agreement for additional insurance shall automatically terminate under the following conditions:

(a) At the end of the twentieth policy year of said Policy.

(b) If any change is made in the plan or principal sum insured of said Policy, except that in such event a new Supplemental Agreement may, at the option of the Company, be attached to the rewritten Policy, subject to adjustment of the premium therefor.

(c) If said Policy shall, by reason of default in payment of premium be continued in force under any non-forfeiture provision thereof.

(d) Upon default in payment of the premium required for this Supplemental Agreement.

Upon written request of the Insured accompanied by said Policy for endorsement, this Supplemental Agreement for additional insurance may be discontinued.

This Supplemental Agreement is issued at a low cost guaranteed rate and the insurance provided hereby will not share in the surplus earnings of the Company.

The reserve for the benefit provided by this Supplemental Agreement is computed according to the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 3% per annum.

The additional benefits provided by this Supplemental Agreement and any reserve on account of such additional benefits are expressly excluded and shall not be considered in determining the Non-Forfeiture or Loan Values provided for in said Policy nor in the amount of insurance or credits allowed under any exchange provision of said Policy. In case said Policy is exchanged for another form of policy there will be no credits or debits on account of premiums which have already been paid under this Supplemental Agreement.

The extra annual premium for this Supplemental Agreement is Seventy and 10/100 Dollars, which is included in the premium stated in said Policy. Any premiums payable under said Policy on or after the end of the twentieth policy year or after this Supplemental Agreement has been terminated shall be reduced by the amount of said extra premium.

18. Have you ever used any alcoholic stimulant to excess or intoxication or have you ever taken or

Any extra premium, or part thereof, paid under this Supplemental Agreement for any period subsequent to the termination hereof will be refunded upon request.

This Supplemental Agreement shall be subject to all the conditions and privileges contained in said Policy, except as herein provided.

In Witness Whereof The Franklin Life Insurance Company has caused this Supplemental Agreement to be executed at Springfield, Illinois, January 5, 1953.

/s/ CHARLES E. DECKER,
President.

/s/ GEORGE E. HATMAKER
Secretary.

Countersigned:

.....

Registrar.

Application Part Two, to The Franklin Life Insurance Company of Springfield, Illinois.

Answers must be made and signed by the Proposed Insured in the presence of the Medical Examiner, the Examiner to record in his own handwriting the answers of the Proposed Insured to every question. Examinations must be made in private.

1. Full name:

Warren William Lloyd.

Date of birth:

May 14, 1920.

2. For how much insurance are you applying?

\$13,000.

3. Residence:

1464 Maxine St., San Jose.

Has change of residence or occupation ever been sought or advised for the benefit of your health?

No.

4. Have you gained or lost weight during the past two years? If so give pounds lost or gained and full details:

Lbs. lost 0 lbs., gained 0.

5. Have you been associated with a tuberculous person during the past year?

No.

6. Have you ever piloted an airplane, received instructions in flying or do you contemplate so doing?

No.

7. When did you last consult a physician or surgeon and for what?

Date: 1942.

Name of physician?

U. S. Army.

Illness?

Malaria.

Duration of illness?

On and off, one year—well, released, 1943.
Have you ever consulted such physician at any other time? If so, give date and details.

No.

Each question must be read, and answered "Yes" or "No," the particular disease or symptom underlined and details given in question No. 24 below. Ditto marks and "o" not acceptable.

8. Have you ever had impairment of sight or hearing or chronic discharge from the ear? Skin disease?

No.

9. Have you ever had pain in the chest, palpitation, shortness of breath, heart attack, heart murmur, high blood pressure, varicose veins or any other disease of the heart or blood vessels?

No.

10. Have you ever had tuberculosis, spitting of blood, asthma, frequent cough or hoarseness, pleurisy, or any other disease of the chest or lungs?

No.

11. Have you ever had indigestion, stomach, or duodenal ulcer, appendicitis, frequent diarrhea, gallstones, jaundice, fistula, rupture, or any other disease of the stomach, intestines or liver?

No.

12. Have you ever had kidney colic or stone, dropsy, albumin, pus, blood or sugar in the urine, or any other disease of the kidneys, bladder or genital organs?

No.

13. Have you ever had frequent or severe headaches, dizziness, fainting spells, epilepsy, delirium tremens, convulsions, neuritis, sciatica, paralysis, nervousness, mental disorder, or any other disease of the brain or nervous system?

No.

14. Have you ever had malaria, acute rheumatic or any other type of fever, syphilis, gout or rheumatism, goitre, diabetes, cancer, tumor, sunstroke or heat prostration, severe wounds or injuries?

Yes.

15. Have you ever had any special examination such as X-Rays, electrocardiogram, basal metabolism, blood sugar or any other blood or laboratory tests? (If so, state reason therefor with results and name and address of physician.):

No.

16. Within the last 5 years have you been advised to restrict your diet?

No.

17. Have you ever applied for disability or compensation benefits to any government or insurance organization?

No.

18. Have you ever been under observation or treatment in any hospital, asylum or sanitarium?

No.

19. How many days have you been absent from work on account of illness during the past 2 years?

None.

20. Have you now any disease, ailment, injury, disorder, infirmity or deformity?

No.

21. If discharged from Service, were you given a medical discharge?

No.

22. Have you within 5 years consulted any physician not included in any of above answers?

No.

24. In regard to those answered "Yes" above, give full particulars below.

Disease or Injury: Malaria.

Number of Attacks: Several.

Date: 1942.

Duration: 1943.

Severity: Moderate.

Results: Well.

Name and Address of Attending Physician:

U. S. Army.

I hereby certify that my answers are correctly recorded and agree that they shall form Part Two of my pending application for insurance, and also of

any subsequent application by me for insurance in this Company unless I then undergo another medical examination which by its terms is made a part of such application and of subsequent application.

I hereby expressly waive, on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician, clinic, hospital, or any other person who has attended or examined me, or who may hereafter attend or examine me from disclosing any knowledge or information thereby acquired by him and I expressly authorize such physician, clinic, hospital or other person to make such disclosures. A photostatic copy hereof shall be as valid as the original.

Dated this 11th day of Dec., 1952.

/s/ WARREN W. LLOYD,
Signature in Full of
Proposed Insured.

Witness:

/s/ ELLIOT G. SCHNEIDER, M.D.,
Medical Examiner.

1127042

Application to The Franklin Life Insurance
Company, of Springfield, Illinois

(Part 1.)

1. Name of Proposed Insured:

Warren William Lloyd.

2. Present Residence:

1464 Maxine St., San Jose, Santa Clara
County, Calif.

Business Address:

4311 El Camino Real, Santa Clara, Santa
Clara County, Calif.

Previous Residence:

640 Williw St., San Jose.

I have resided at present address 1 year. Send
all my mail to my residence.

3. a. Birth Place: Gypsum, Kansas.

b. Birth Date: March 14, 1920.

c. Age (nearest birthday): 33 Years.

4. Married: ☒

Sex—Male: ☒

Nationality: American

Race: White.

5. Description of Policy desired:

10,000 Mortgage Redemption.

a. Plan of Policy:

Ord. Life Double to age 65. See #26.

b. Amount of Insurance:

\$13,000. See #26.

Check Special Benefits Desired:

c. Premium Waiver Disability: ☒

d. Double Indemnity: ☒

Check (e) or (f) Below:

e. Participating: ☒

6 Is Automatic Premium Loan Provision Desired?

Yes.

7. Premiums to be paid:

Monthly.

8. Beneficiary:

Primary Beneficiary:

Leeta Adessa Lloyd.

Relationship to Proposed Insured:

Wife.

9. Insurance now in force on life if proposed insured?

None.

10. a. Occupation. Give job title and describe exact duties: Plumbing Contractor.

b. Name of Employer? W. M. Henderson.

c. Type of Business? Contracting.

d. Length of time in present occupation? Six.

e. Have you any other occupation or do you contemplate any change in occupation? No.

f. What was your immediate prior occupation?

U. S. Army.

11. Has any application for insurance upon your life or for reinstatement of your insurance ever been declined, postponed; rated up or limited? (If yes, when and what company?)

No.

12. Are you now negotiating for insurance, or have you within six months applied for insurance or reinstatement of insurance in any other company? (If yes, give details.)

No.

13. a. Have you within the last 5 years participated, do you now participate, or do you contemplate participating in aviation as: (1) Pilot or student pilot; (2) crew member; (3) flying of any kind for additional flight pay?

No.

14. Have you ever been rejected for military or naval service for physical defect? (If yes, give date and reasons.)

No.

15. If discharged from Service, were you given a medical discharge? (If yes, give complete details in 24 below if this application is non-medical.)

No.

16. Have any of your parents, brothers or sisters now, or ever had, apoplexy, insanity, tuberculosis or epilepsy? (If yes, give details.)

No.

17. Have you been associated with a tuberculous person during the past year? (If yes, give date and details.)

No.

been advised to take treatment for alcoholism?
(If yes, give full details.)

No.

19. Have you ever used opium, cocaine, chloral or any habit forming drug? (If yes, give details.)

No.

In giving causes of death or ill health, avoid all indefinite terms. State full details of health of those living particulars of association with proposed insured.

20. Family Record——Living——

Wife: Age 36, Health G.

Father: Age 74, Health F.

Mother: Age 67, Health F.

Brothers: Age 35, Health G.

Age 31, Health G.

Sisters: Age 37, Health G.

21. Is this insurance to be owned by a partnership, corporation, or any individual other than the proposed insured? (If so, give name and address and have owner join in execution of the application in space provided thereby below.)
application in space provided therefor below.)

No.

Complete the Following Questions Only if
Medical Examination Is Not Being Made

22. a. Give exact measurements as to height and weight with shoes and ordinary clothing.

5 ft., 10 in., 155 lbs.

- b. Have you gained or lost weight within the last two years? (If yes, give details.)

No.

23. Each question must be read, and answered "Yes" or "No," the particular disease or symptom underlined and details given in No. 24 below. Ditto marks, check marks and "O" not acceptable.

a. Have you ever had impairment of sight or hearing or chronic discharge from the ear?

No.

b. Have you ever had pain in the chest, palpitation, shortness of breath, heart attack, heart murmur, high blood pressure, varicose veins, or any other disease of the heart or blood vessels?

No.

c. Have you ever had indigestion, stomach or duodenal ulcer, appendicitis, frequent diarrhea, gallstones, jaundice, fistula, rupture, or any other disease of the stomach, intestines or liver?

No.

d. Have you ever had tuberculosis, spitting of blood, asthma, frequent cough or hoarseness, pleurisy, or any other disease of the chest or lungs?

No.

e. Have you ever had kidney colic or stone, dropsy, albumin, pus, blood or sugar in the urine, or any other disease of the kidneys, bladder or genital organs?

No.

f. Have you ever had frequent or severe headaches, dizziness, fainting spells, epilepsy, delirium tremens, convulsions, neuritis, sciatica

paralysis, nervousness, mental disorder, or any other disease of the brain or nervous system?

No.

g. Have you ever had malaria, acute rheumatic or any other type of fever, syphilis, gout or rheumatism, goitre, diabetes, cancer, tumor, sunstroke or heat prostration, severe wounds or injuries?

Yes.

h. Have you ever had any special examination such as X-Rays, electrocardiograms, basal metabolism, blood sugar or any other blood or laboratory tests? (If so, state reason therefor with results and name and address of physician.)

No.

i. Have you ever applied for disability or compensation benefits to any government or insurance organization?

No.

j. Have you ever been under observation or treatment in any hospital, asylum or sanitarium?

No.

k. How many days have you been absent from work on account of illness during the past 2 years?

None.

l. Have you within 5 years consulted, or been treated by, any physician, practitioner, hospital or clinic for any injuries or illness not included in your above answers?

No.

24. In regard to those answered "Yes" above, give full particulars below.

Disease or Injury: #9 Malaria.

Date: 1942.

Number of Attacks: 1.

Duration: 3 weeks.

Severity: Light.

Results: Complete recovery.

Name and Address of Attending Physician:
Army Hospital.

25. Use this space for special requests.

Date Policy Jan. 1, 1953.

26. Home Office Endorsements Only.

#5b. \$10,000 Mortgage Redemption for 20 yrs.
with \$1,500 Dble Ins. to 65.

There has been delivered to the agent the sum of \$12.57 in notes, on account of the first premium, (See agreements below.)

It Is Hereby Declared that all of the statements, representations and answers contained herein or given to the medical examiner, should examination be required, are full, complete and true. It is Hereby Agreed: (1) That no information acquired by any representative of the Company or medical examiner shall bind the Company unless it shall have been set forth in writing in this application and that no waiver or modification shall bind the Company unless in writing and signed by the President or Secretary; (2) That if the policy issued

hereon shall be on the participating plan then in any distribution of surplus or profit the principles and method which may be adopted by the Company for such distribution and its determination of the amount apportioned to any policy which may be issued on this application shall be and are hereby ratified and accepted; (3) That any policy issued hereon shall not take effect unless and until the policy has been delivered to the undersigned and the first premium paid during the lifetime and good health of the proposed insured (except as provided in the Receipt bearing the same number and date as this application if the entire first premium has been paid and acknowledged above and such receipt issued) in which event such policy shall be deemed effective as of the beginning of the first policy year as shown on such policy; (4) That the acceptance of any policy issued on this application will constitute a ratification by the undersigned of any corrections in or additions to this application made by the Company in the space provided for "Home Office Endorsements Only."

Any physician, clinic, or hospital is hereby authorized to disclose any information heretofore or hereafter acquired while attending the proposed insured in a professional capacity and if the Company desires to have an examination by its medical examiner the proposed insured hereby agrees to submit to such an examination. A photostatic copy hereof shall be as valid as the original.

Dated at San Jose, State of Calif., this 6th day of Dec., 1952.

/s/ WARREN W. LLOYD,
Signature of Proposed
Insured.

/s/ JACK O'NEIL,
Soliciting Agent.

/s/ A. B. CREBASSA,
General Agent.

Form 1305-1

For the Applicant's Benefit Get a Cash Settlement
for Full First Premium

No. 665143

1127042

[Specimen.]

The Franklin Life Insurance Company

Insurance on the Life of: Warren William Lloyd.
Policy No.: 1127042.

Double Benefit: \$3,000.00.

Principal Sum Insured: \$1,500.00.

The First Policy Year Begins: January 1, 1953.

Annual Premiums: \$136.63.

Semi-Annual Premiums: \$71.05.

Quarterly Premiums: \$36.04.

Monthly Premium: \$12.07.

Preferred Risk—Ordinary Life
Double Insurance to Age 65

Participating—Annual Dividends
Premiums Payable for Life

With Additional Insurance for Mortgage
Liquidation—Double Indemnity
Waiver of Premium Disability

[Endorsed]: Filed August 1, 1955.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS OF FACT PUR-
SUANT TO RULE 36 FEDERAL RULES
OF CIVIL PROCEDURE

To the Above-Named Defendant, The Franklin Life Insurance Company, a Corporation, and to Its Attorneys at Law, McCutchen, Thomas, Matthew, Griffiths & Greene:

The plaintiff, Leeta A. Lloyd, named in the above-entitled action, hereby requests, pursuant to the provisions of Rule 36, Federal Rules of Civil Procedure, that you, The Franklin Life Insurance Company, make the admissions herein specified within 15 days after the service of this request upon you. You are requested to make the said admissions only for the purposes of this action and subject to all pertinent objections to admissibility which may be interposed at the trial.

Accordingly, you are hereby requested to admit that:

(a) A Receipt, in words and figures contained in the attached printed form with the typewritten words and figures therein inserted, was given by your soliciting agent, Jack O'Neil, to Warren William Lloyd, the insured under policy No. 1127042 mentioned in the Complaint herein, on December 6, 1952:

No. 665143

This receipt must not be detached unless settlement toward first premium is collected at time of application, and shall operate as a Binding Receipt under conditions stated in Paragraph "First" only.

Receipt

Received from Warren William Lloyd, \$12.57 (note \$12.57) on account of the first monthly premium on proposed insurance on the life of Warren William Lloyd, for which an application bearing a corresponding number is this day made to The Franklin Life Insurance Company.

First: It is agreed that (1) if the entire first premium stipulated in the policy issued hereon is paid to an authorized agent of the Company at the time of making this application and (2) if the Company shall be satisfied after investigation and medical examination, if a medical examination is required, that the proposed insured was, under the

Company's rules and standards, an acceptable risk for the amount of insurance (not in excess of the Company's limit of retention) and upon the plan and at the rate of premium applied for on the date hereof or on the date of the medical examination, if a medical examination was required, whichever is the later, the insurance shall be effective in accordance with the provisions of the policy applied for from the date of this application or the date of the medical examination, if a medical examination was required, whichever is the later.

Second: If the entire first premium is not paid or if a policy is issued differing in plan or amount or premium or benefits from that applied for, no insurance shall be considered in effect under this application unless and until the first premium is paid and the policy manually delivered to and accepted by the applicant during the continued lifetime and good health of the proposed insured.

Dated December 6, 1952.

Signed:

JACK O'NEIL,
Agent.

This receipt shall be void if altered or modified or if any check or draft tendered in payment of the first premium is not paid when presented for payment.

This receipt to be detached by agent Only when payment is received at time of making application.

(b) That said Receipt was attached to Application No. 665143, being the same Application, a photostat copy of which is attached to your Answer heretofore filed herein;

(c) That said Receipt was given to the named applicant, Warren William Lloyd, pursuant to authority delegated by you to said agent to give such Receipt, and that said Receipt is a true, genuine and correct copy of the Receipt actually given by your said agent so authorized to give it;

(d) That said Receipt was given by your said agent upon a form prepared by you.

(e) Pursuant to your regular underwriting practices and standards you approved the application for the issuance of the policy of life insurance on the plan and for the class of risk and amount of insurance applied for.

(f) That the commencement of the suicide period set forth in the third defense of your Answer on page 2 thereof between lines 10 and 12, inclusive, commenced coincident with the attaching of the risk.

(g) That in the event of the death of the said insured from natural causes on or after December 6, 1952, you would have become liable to pay the beneficiary the benefits provided in said policy;

(h) That the attached copy of letter dated January 26, 1955, addressed to Charles W. Ricketts, Los Gatos, California, and signed Frieda Visser, Secretary Claims Committee, of your company, is

a true copy of the original sent to said Ricketts on said date.

Dated: October 14, 1955.

/s/ NEIL CUNNINGHAM,

/s/ C. W. RICKETTS,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

(Copy)

The Franklin Life Insurance Company

Home Office: Springfield, Illinois

January 26, 1955

Mr. Charles W. Ricketts,

Attorney at Law,

131 West Main Street,

Post Office Box 273,

Los Gatos, California.

Re: Policy No. 1127042,

Warren William Lloyd, Deceased.

Dear Mr. Ricketts:

We have for acknowledgment your letter of January 18.

If you will refer to the photostatic copy of the application, which is attached to this policy, you

will note in box number 25 that our Company was requested to date the policy January 1, 1953. If this request had not been made, the policy would have been issued with an effective dating of December 11, 1952, with premium payments commencing on that date. In that event, we would have considered that the suicide period had expired on December 11, 1954. We hold that the terms of the binding receipt were modified by the insured's own act in requesting a policy date in advance of either the application date or the date of the medical examination, and that in view of the requested policy date, the suicide period had not expired at the time of death, as our risk would not have commenced until January 1, 1953, and any first premium paid by the insured would have been for the premium due January 1, 1953.

We can admit no liability on the policy other than the return of the eight quarterly premiums paid totaling \$288.32 and our check for this amount is enclosed, payable to the order of Leeta A. Lloyd, beneficiary, and through you, her attorney, we make demand for the surrender of this policy.

Very truly yours,

/s/ FRIEDA VISSER,

Secretary Claims Committee.

[Endorsed]: Filed October 14, 1955.

[Title of District Court and Cause.]

REPLY TO REQUEST FOR ADMISSION

State of Illinois,

County of Sangamon—ss.

The Franklin Life Insurance Company, defendant in the above-entitled action, makes the following statement in response to the request for admission of facts and of genuineness of documents served upon it by plaintiff on October 19, 1955:

1. It denies the truth of the matters set forth in paragraphs a, c, d, and g.

2. It denies the truth of the matters set forth in paragraph b. It states that a receipt containing printed provisions identical to the provisions of the receipt attached to the request, with the exception of the number appearing thereon, was attached to application number 665143 and bore the same number, but it denies that such receipt was detached and given to the applicant Lloyd.

3. It denies the truth of the matters set forth in paragraph f and states that the period under the suicide clause started January 5, 1953.

THE FRANKLIN LIFE
INSURANCE COMPANY,

By /s/ R. A. FREDERICK,
Administrative Vice Pres.

Subscribed and sworn to before me this 2nd day of November, 1955.

[Seal] /s/ ANTONETTE LUDEK,
Notary Public in and for the County of Sangamon,
State of Illinois.

My commission expires May 17, 1959.

Receipt of copy acknowledged.

[Endorsed]: Filed November 8, 1955.

[Title of District Court and Cause.]

REQUEST TO ADMIT

Please take notice that defendant requests plaintiff within fifteen days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the document attached to defendant's answer as Exhibit A, which is a copy of defendant's policy No. 1127042 and of the application therefor by the insured Warren William Lloyd, is a true copy of said policy and application.
2. That the document attached to this request and marked Exhibit B, which is a copy of a letter sent by defendant to plaintiff with respect to payment of a premium under the policy, is a true copy of said letter.

3. That the two signatures appearing on parts one and two of the application referred to in paragraph 1, *supra*, which purport to be the signature in each instance of the proposed insured Warren William Lloyd, are in fact his signatures.

4. That the insured Warren William Lloyd requested, at the time his application for insurance was completed, that his policy (subsequently defendant's policy number 1127042) be dated January 1, 1953.

5. That defendant's policy number 1127042 was delivered to the insured Warren William Lloyd sometime after January 5, 1953.

6. That the insured Warren William Lloyd died by self-destruction December 21, 1954.

7. That total premiums of \$288.32 were paid under defendant's policy number 1127042, consisting of eight quarterly premiums of \$36.04 each.

November 15, 1955.

McCUTCHEON, THOMAS, MATTHEW, GRIFFITHS & GREENE,

Attorneys for Defendant.

EXHIBIT B

August 19, 1954.

Mrs. Leeta A. Lloyd,
1464 Maxine Street,
San Jose, California.

1127042—Warren W. Lloyd.

Dear Mrs. Lloyd:

We have received your check for \$36.04 intended as payment of the quarterly premium due July 1, 1954, under your husband's policy. According to our records this premium was credited the early part of July, placing the contract in good standing to October 1, 1954. Under the circumstances, we are returning your check dated July 19th which is not required.

Sincerely,

/s/ (MRS.) AGNES J. CAUDLE,
Premium Accounting Dept.

AJC:bb

Enclosure

CC: Mr. Arthur B. Crebassa,
Mr. George A. Landis.

[Endorsed]: Filed November 16, 1955.

[Title of District Court and Cause.]

REPLY TO REQUEST TO ADMIT

To: McCutchen, Thomas, Matthew, Griffiths &
Greene, Morris M. Doyle, Bernard Petrie,
Esquires:

Plaintiff Leeta A. Lloyd makes the following statements in response to defendant's Request to Admit, dated November 15, 1955.

1. Admits as to defendant's Exhibit A, attached to defendant's answer, that the copy of policy number 1127042 as set forth in said Exhibit A is a true copy of said policy. Denies that the application set forth in that Exhibit A is the full application form as signed by Warren William Lloyd; and alleges that to the application when signed by the said Warren William Lloyd there was attached a form of receipt prepared by defendant and that that form of receipt was the same form of receipt described in Request for Admissions of Fact Pursuant to Rule 36, Federal Rules of Civil Procedure, served on defendant on October 19, 1955.

2. Admits that the document marked Exhibit B attached to defendant's Request to Admit, dated November 15, 1955, is a true copy of a letter sent by defendant to plaintiff.

3. Admits that the two signatures appearing on Part One and Two of the application referred to, which purports to be the signature in each instance

of the proposed insured Warren William Lloyd are in fact his signatures.

4. Denies that Warren William Lloyd requested that his policy be dated January 1, 1953.

5. Admits that defendant's policy number 1127042 was delivered to the insured Warren William Lloyd sometime after January 5, 1953.

6. Admits that the insured Warren William Lloyd died by self-destruction, December 21, 1954.

7. Denies all statements in number 7 of defendant's said Request to Admit.

November 27, 1955.

/s/ NEIL CUNNINGHAM,

/s/ C. W. RICKETTS.

Receipt of copy acknowledged.

[Endorsed]: Filed November 30, 1955.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
UNDER RULE 56(B) AND (C)

The defendant hereby moves the Court to enter summary judgment for it, in accordance with the provisions of Rule 56(b) and (c) of the Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and that

defendant is entitled to judgment as a matter of law.

This motion is based upon the pleadings, defendant's request to admit served November 16, 1955, and the reply thereto served November 29, 1955, and the affidavit of R. A. Frederick attached hereto.

McCUTCHEON, THOMAS, MATTHEW, GRIF-
FITHS & GREENE,

Attorneys for Defendant.

Notice of Motion

To: Neil Cunningham, Esq., 1508 Hobart Building,
582 Market Street, San Francisco 4, California,
and C. W. Ricketts, Esq., 131 West Main
Street, P.O. Box 273, Los Gatos, California,
Attorneys for Plaintiff.

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court in the Master Calendar Department, United States Court House, Post Office Building, Seventh and Mission Streets, City of San Francisco, on the 16th day of January, 1956, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

McCUTCHEON, THOMAS, MATTHEW, GRIF-
FITHS & GREENE,

Attorneys for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT OF R. A. FREDERICK IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

State of Illinois,
County of Sangamon—ss.

R. A. Frederick, being duly sworn, states:

I am fifty-four years old and live at No. 3 Wildwood Road, Springfield, Illinois.

I am the Administrative Vice President of The Franklin Life Insurance Company (hereinafter called the Company), defendant in the above-entitled action. I have held that position since October 20, 1949. I have been employed by defendant since November 1, 1923. In my present capacity I supervise the processing of applications for insurance and the issuance of policies in accordance therewith. The various steps in the processing of applications and the issuance of policies are well known to me. The records of the Company are held by a custodian under my supervision.

I have caused a true copy of defendant's insurance policy No. 1127042 together with the insured's application therefor to be made and attached hereto as Exhibit A.

The following is a description of the operation by which applications are processed, policies are issued and the Company's records are kept. The ap-

plication is received by Harriette Good at the mail desk in the Company's Entry Division, where work papers are prepared and placed with the application on a file back. The file is then sent to the Underwriting Department for approval. If the application is approved, it is sent to the New Business Department. At this point the policy is typed and a so-called "permanent data" record is made so that duplicate copies of the policy can be prepared if necessary. The original application is attached to the "permanent data" record. The policy with accompanying material is then sent to the Records Section. At this point a photostatic copy is made of the application and attached to the policy. The policy is mailed from the Records Section and records are printed there. The "permanent data" record with application attached is sent to the vault. The supervisor of the vault and custodian of the records there is Mr. George Cunningham.

When an application is received by Harriette Good at the mail desk of the Entry Division with its receipt still attached, that receipt is detached in the Entry Division and placed on the file with the application.

Exhibit A attached hereto was made from the "permanent data" record and from the insured's application. A true copy of the policy was made from the data and a photostatic copy of the application was made from the original application. The original application will be presented upon the hear-

ing of the Company's motion for summary judgment.

The application for policy No. 1127042, the policy involved in this action, was received in the Company's home office December 11, 1952. The policy was actually executed, that is, typed and signed, in the Company's home office January 5, 1953. That date of execution appears in the "permanent data" record. The policy was made effective as of January 1, 1953, in accordance with the special request of the insured contained in box number 25 of Part 1 of his application. Pursuant to that request the first policy year commenced January 1, 1953. The policy was mailed from the home office January 6, 1953, to the Company's agent for delivery.

When the application was received at the Entry Division, there was still attached to it the receipt bearing the number identical to that on the application. In accordance with routine practice that receipt was detached in the Entry Division and placed just in back of the application on the file back. When this suit was commenced, the receipt was removed from the file back and sent to Mr. Frederick H. Stone, an associate counsel for the Company. Mr. Stone now has custody of that receipt. I have caused a copy of that receipt to be made and attached hereto as Exhibit B. I have been advised by counsel that the Company is conceding, for the purposes of this motion only, that the receipt attached to the application or a receipt substantially similar in form was given to the insured. Therefore, it is not

now contemplated that the receipt will be presented on the hearing of the Company's motion for summary judgment. Mr. Stone is retaining the receipt in his possession.

/s/ R. A. FREDERICK.

Subscribed and sworn to before me this 15th day of December, A.D. 1955.

[Seal] /s/ ANTONETTE LUDEK,
Notary Public in and for the State of Illinois,
County of Sangamon.

My commission expires May 17, 1959.

EXHIBIT B

No. 665143

This receipt must not be detached unless settlement toward first premium is collected at time of application, and shall operate as a Binding Receipt under conditions stated in Paragraph "First" only.

Receipt

Received from \$.
in cash \$.and/or note \$.on account
of the first.....premium on proposed insurance on the life of.....
for which an application bearing a corresponding number is this day made to The Franklin Life Insurance Company.

First. It is agreed that (1) if the entire first premium stipulated in the policy issued hereon is paid to an authorized agent of the Company at the time of making this application and (2) if the Company shall be satisfied after investigation and medical examination, if a medical examination is required, that the proposed insured was, under the Company's rules and standards, an acceptable risk for the amount of insurance (not in excess of the Company's limit of retention) and upon the plan and at the rate of premium applied for on the date hereof or on the date of the medical examination, if a medical examination was required, whichever is the later, the insurance shall be effective in accordance with the provisions of the policy applied for from the date of this application or the date of the medical examination, if a medical examination was required, whichever is the later.

Second. If the entire first premium is not paid or if a policy is issued differing in plan or amount or premium or benefits from that applied for, no insurance shall be considered in effect under this application unless and until the first premium is paid and the policy manually delivered to and accepted by the applicant during the continued lifetime and good health of the proposed insured.

Dated, 19... Signed Agent

This receipt shall be void if altered or modified or if any check or draft tendered in payment of the first premium is not paid when presented for payment.

This receipt to be detached by agent Only when payment is received at time of making application.

Affidavit of service attached.

[Endorsed]: Filed January 5, 1956.

MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

“Defendant concedes for the purposes of this motion only that a receipt on a form prepared by defendant was given to the insured.”

Dated December 30, 1955.

[Endorsed]: Filed January 5, 1956.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
UNDER RULE 56

Plaintiff moves the Court to enter summary judgment for plaintiff in accordance with Rule 56 of the Federal Rules of Civil Procedure on the ground that there was no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law.

This motion is based upon the pleadings and upon all of the papers in the file in this case including the deposition of Jack O’Neil.

Dated at Los Gatos, California, January 24, 1956.

/s/ C. W. RICKETTS,

Attorney for Plaintiff.

Notice of Motion

To: McCutchen, Thomas, Matthew, Griffiths & Greene, Morris M. Doyle, Bernard Petrie, 1500 Balfour Building, 351 California Street, San Francisco 4, California. Telephone: DOuglas 2-3131. Attorneys for Defendant.

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court in the Master Calendar Department, United States Court House, Post Office Building, Seventh and Mission Streets, City of San Francisco, on the 7th day of February, 1956, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

/s/ C. W. RICKETTS,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed January 28, 1956.

[Title of District Court and Cause.]

AFFIDAVIT OF JACK O'NEIL IN OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

State of California,
County of Santa Clara—ss.

Jack O'Neil, being duly sworn, states:

I am 53 years old and live at 4712 Alum Rock Avenue, San Jose, California. I am an insurance

agent with offices at 1612 East Santa Clara Street, San Jose, California.

I have operated as a life insurance agent for The Franklin Life Insurance Company (hereinafter called the Company), defendant in the above-entitled action, since 1952. I knew Warren William Lloyd and on December 6, 1952, completed for him an application for insurance with the Company. That application, copy of which is attached hereto as Exhibit A, was numbered 665143. Mr. Lloyd signed the application in my presence.

At the time of his application, Mr. Lloyd gave to me a note for \$12.57 to cover a full monthly premium on the plan applied for. I delivered the application to Mr. Crebassa, a general agent of the Company in San Jose, but I kept Mr. Lloyd's note in my possession.

In January, 1953, I received from the Company policy number 1127042 issued upon the above application and delivered it to Mr. Lloyd. At that time Mr. Lloyd decided to pay premiums quarterly instead of monthly as he originally requested. Therefore, he gave to me his check for \$36.04 to cover the first quarterly premium for the quarter January 1 to March 31, 1953. At the same time I either returned the note to Mr. Lloyd or destroyed it. In all probability I returned the note to him. It has been my practice to return to insured persons notes or checks initially deposited with me and superseded by a subsequent payment as in Mr. Lloyd's case. I can state categorically that Mr. Lloyd never made any payment to me on the note.

At no time did Mr. Lloyd make a request for short term or temporary insurance pending the issuance of his policy, which was to be effective January 1, 1953. Mr. Lloyd gave the note to me to cover the first monthly premium on the policy to be issued.

The Company's instructions regarding short term insurance appear at pages 35 and 36 of the Company's Rate Book, published in January, 1948. Copies of those pages are attached hereto as Exhibits B and C, respectively. Under those instructions, if short term insurance is requested, the procedure outlined must be followed. A request for the short term insurance must be made in the application. The premium for the short term insurance must accompany the application. The first regular premium must be paid before the end of the short term period.

Since Mr. Lloyd did not request any short term insurance, none of the above steps were followed in this case.

/s/ JACK O'NEIL.

Subscribed and sworn to before me this 17th day of February, 1956.

[Seal] /s/ ETHEL L. GRACE,
Notary Public in and for the County of Santa
Clara, State of California.

My commission expires March 15, 1956.

EXHIBIT B

Waiver disability is issued to male lives at ages 15 to 55, inclusive, and to female lives at ages 15 to 50, inclusive. Disability extra is not payable after age 60 for male lives and 55 for female lives.

Double Indemnity Insurance

This book shows the extra premium required for double indemnity insurance. This benefit is issued at ages 15 to 55, inclusive. If the benefit is attached to a policy the premium for such benefit is not payable after the insured attains age 60.

Sub-Standard Insurance Values

This rate book contains the extra premium required for policies issued on a sub-standard basis. The non-forfeiture values for sub-standard policies are the same as those for standard policies, except that any sub-standard policy issued will not provide extended insurance. The automatic non-forfeiture option will be paid-up insurance.

Short Term Insurance

An applicant may desire that the annual premiums on his policy be made payable at a certain time of the year; for instance, a cotton planter may prefer to have his premiums become due late in the fall, when his cotton has been marketed. Under such circumstances Short Term Insurance may be granted by endorsement on the regular policy. Re-

quest for same should be stated in the application over the signature of applicant.

Short Term Insurance will not be granted for more than six months. Any portion of one month will be considered as an additional month; for example, where term desired is four months and ten days, premium for five months will be charged.

On policies issued with short term the premium for such short term must accompany the application.

EXHIBIT C

The first regular premium must be paid before the end of the short term period. No grace period is permitted for payment of this premium. No commissions are payable on short term premiums.

Special attention must be paid to the question of insurance age. Upon expiration of the Short Term Insurance, which is the beginning of the regular insurance, the insurance age may be one year higher than the age on which the Short Term premium at date of issue is based. In such a case the regular premium for the higher age must be collected.

The rates per \$1,000 for one month's Short Term Insurance appear on the "Miscellaneous Premium Rates" pages. For two months, multiply by 2; for three months, by 3; and so on.

On Juvenile Policies with Payor Benefits add 1/12 of the extra for Payor Insurance.

On Substandard Policies with a table rating multiply the standard premium by the following factors:

Table	Factor
A	1.25
AA	1.375
B	1.50
C	1.75
D	2.00
E	2.25
F	2.50

On Substandard Policies with a Flat Extra Rating add 1/12 of the extra for each month.

[Endorsed]: Filed February 20, 1956.

[Title of District Court and Cause.]

AFFIDAVIT OF GEORGE E. HATMAKER IN
OPPOSITION TO PLAINTIFF'S CROSS-
MOTION FOR SUMMARY JUDGMENT

State of Illinois,
County of Sangamon—ss.

George E. Hatmaker, being duly sworn, states:

I am forty-five years old and live at 1317 East Lake Shore Drive, Springfield, Illinois.

MORTGAGE REDEMPTION							
1127012		M. E. Period 20		P. G. 782			
		Yrs.					
Annual	Uncl. Ann.	Qty.	Monthly	SS or AA	Sht. Term Irreg.		
57.15	29.72	15.08	5.04				
4.88	2.59	1.26	.41				
DB 4.50	2.34	1.20	.42				
51.13	34.10	17.54	5.87				
70.00	35.40	18.30	6.20				
31.11	17.35	7.84	2.67				

AMOUNT MORTGAGE REDEMPTION INSURANCE								
Amount	Yr.	Amount	Yr.	Amount	Yr.	Amount	Yr.	Amount
5,000	6	11	6,500	10	4,500	11		
9,700	9	10	6,200	17	4,200	22		
9,400	8	10	5,800	10	3,800	24		
9,100	8	14	5,400	10	3,400	24		
8,800	10	13	5,000	20	3,000	20		

Endorsed: Filed February 21, 1956.

[Title of District Court and Cause.]

ORDER

This cause came on to be heard on motion of the defendant for summary judgment pursuant to Rule 56, F.R. Civ. P., and on the plaintiff's counter-motion for summary judgment under Rule 56.

The Court has considered the pleadings, admissions, depositions and affidavits, together with all other documents on file. Plaintiff has conceded in open court that the insured requested the dating of the policy as it appears on the application and the insurance policy. This eliminates any issue as to a material fact. The Court has heard oral argument and considered the memoranda filed by the parties hereto. There being no genuine issue as to any material fact, and the defendant being entitled to judgment as a matter of law, it is the order of the Court that defendant's motion be, and the same hereby is, granted, and plaintiff's motion be, and the same hereby is, denied. It is further ordered that the defendant recover its costs.

Dated: February 21, 1956.

/s/ EDWARD P. MURPHY,

United States District Judge.

[Endorsed]: Filed February 21, 1956.

exhibits and other papers in the file of this case and which have been used or referred to in connection with the motion and cross-motion for summary judgment or otherwise.

Dated at Los Gatos, California, March 7, 1956.

NEIL CUNNINGHAM, and
C. W. RICKETTS,

By /s/ C. W. RICKETTS,
Attorneys for Plaintiff.

Memorandum of Points and Authorities in Support
of Motion to Vacate Summary Judgment

Defendant's motion for summary judgment was improperly and erroneously granted because material fact issues were unresolved at the time of granting the said motion for summary judgment. Plaintiff refers to the following material fact issues unresolved in this case, to wit:

1. Was a copy of the application given to Warren William Lloyd by defendant's agent, Jack O'Neil, at the time that the application was signed? This is a material issue because defendant's agent Jack O'Neil (hereinafter O'Neil) acknowledged in the application, photostatic copy of which is attached to the answer of defendant in this case, that a promissory note was given by Warren William Lloyd, the applicant, to O'Neil on December 6, 1952, the date of the application. This is material because Section 10115 of the California Insurance

Code makes life insurance coverage commence on December 6, 1952, the date the application was signed by the applicant," when a payment is made equal to the full first premium at the time an application for life insurance * * * is signed by the applicant and * * * the applicant received at that time a receipt for said payment on a form prepared by the insurer * * *"

2. In his deposition, which must be taken as true for purposes of ruling on summary judgment, O'Neil said that at the time the application was signed a cover note coupon was attached to the application whereby insurance coverage would commence December 11, 1952. See deposition of O'Neil.

3. The policy itself provides that "this policy and the application therefor, a copy of which is hereto attached and made a part hereof, constitute the entire contract between the parties." The policy also provides "this insurance is granted in consideration of the application herefor and of the payment in advance of the premium as herein provided." Refer to *Meyer vs. Johnson*, 7 Cal. App. 2d 604, 609, where the court holds that "as a matter of fact, as well as of law, it is apparent, therefore, that the whole application was necessary to constitute the contract." At the time of argument for motion of summary judgment, defendant introduced application with the coupon cover note attached showing that insurance coverage would commence on December 11, 1952, the date of the medical examination. The failure of O'Neil to detach

and deliver to the applicant the coupon cover note at the time of receiving the promissory note given by applicant to O'Neil, is not a failure that can be attributed to the applicant or to plaintiff, because the applicant had the right to receive the coupon cover note at that time. See *Ransom vs. The Penn Mutual Life Insurance Company*, 43 Cal. 2d 420; 274 P. 2d 633, and cases there cited.

4. Plaintiff cannot be deprived of the right to submit to a jury the question as to whether an identical cover note from another application or the same application was given by O'Neil to the applicant at the time of signing the application. On page 9 of his deposition, O'Neil stated that it was his usual procedure to give a receipt and that he must have given a receipt in this case and that his usual procedure is to use the form of receipt attached to the application. It will be presumed that the usual business procedure was followed. See California Code of Civil Procedure, Section 1963, subdivisions 4, 19, 20, 21 and 28. These presumptions are fact presumptions which would furnish evidence to be submitted to a jury.

5. It is clearly the law that applicant was entitled to the coupon cover note receipt when he gave his promissory note at the time he signed the application. There is no question but that he gave the note at that time and that it was equal to a full month's premium. See deposition of O'Neil, page 11. A jury should be premitted to pass upon the question as to whether the coupon cover note

receipt attached to the application or another identical receipt was given by O'Neil to the applicant at the time the application was signed.

Dated at Los Gatos, California, March 7, 1956.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 8, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above-named plaintiff Appeals to the United States Court of Appeals for the Ninth Circuit from the summary judgment made and entered herein on the 27th day of February, 1956, ordering, adjudging and decreeing that defendant "is entitled to judgment as a matter of law, that the action be dismissed on the merits, and that defendant recover its costs" and from the whole of said judgment.

Dated this 26th day of March, 1956.

/s/ NEIL CUNNINGHAM,

/s/ C. W. RICKETTS,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed March 27, 1956.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD AND DOCKETING APPEAL

On the application of plaintiff ex parte, the Court being fully advised,

It Is Ordered that the time for filing the Record on Appeal with the United States Court of Appeals for the Ninth Circuit, and for docketing therein the appeal taken by plaintiff by Notice of Appeal, filed March 27, 1956, is extended to May 27, 1956, pursuant to Rule 73(g) of the Federal Rules of Civil Procedure.

Dated: April 25th, 1956.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed April 25, 1956.

[Title of District Court and Cause.]

ORDER

I have considered the motion to vacate judgment in the above-entitled cause. In my opinion there is no merit in the motion. Accordingly, it is hereby denied.

Dated: April 25, 1956.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed April 25, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above-named plaintiff appeals to the United States Court of Appeals for the Ninth Circuit from the Summary Judgment made and entered herein on the 27th day of February, 1956, ordering, adjudging and decreeing that defendant "is entitled to judgment as a matter of law, that the action be dismissed on the merits, and that defendant recover its costs" and from the whole of said judgment, and from the Order of the above-entitled Court made and entered herein on the 25th day of April, 1956, denying plaintiff's motion to vacate said Summary Judgment.

Dated: May 5, 1956.

/s/ NEIL CUNNINGHAM,

/s/ CHAS. W. RICKETTS,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed May 7, 1956.

[Title of District Court and Cause.]

DEPOSITION OF JACK O'NEIL

Be It Remembered: That, pursuant to written stipulation of taking deposition attached hereto, and

on Tuesday, the 25th day of October, 1955, commencing at the hour of 10:30 o'clock a.m. of said day, before Victor C. Osterman, a Notary Public, personally appeared Jack O'Neil, produced as a witness on behalf of Plaintiff herein, at the office of Moore & Minor, 45 North First Street, San Jose, California, and being by me first duly sworn, was examined as a witness in said cause.

C. W. Ricketts, Esq., and Neil Cunningham, Esq., are present on behalf of Plaintiff herein.

Bernard Petrie, Esq., representing McCutchen, Thomas, Matthew, Griffiths & Greene, Esq., is present on behalf of Defendant herein. [2*]

It is stipulated that said deposition may be taken before Victor C. Osterman, a Notary Public in and for the County of Santa Clara, State of California.

It is further stipulated that said deposition is taken under the Federal Rules of Civil Procedure.

It is further stipulated that in the event the witness refuses to answer any question, that the Notary has instructed him to answer, and the witness still refuses to answer on the advice of Counsel.

It is further stipulated that said deposition may be taken down in stenotype by Victor C. Osterman, a competent stenographic reporter, and not interested in any way in the case or any of the parties involved. [3]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

JACK O'NEIL

being first duly sworn by the Notary Public to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct Examination

By Mr. Ricketts:

Q. Your name? A. Jack O'Neil.

Q. Where do you live, Mr. O'Neil?

A. 4712 Alum Rock Avenue.

Q. In San Jose? A. Right.

Q. And where is your office?

A. 1612 East Santa Clara Street.

Q. In San Jose? A. San Jose.

Q. What is your occupation, business or profession, Mr. O'Neil? A. Insurance agent.

Q. How long have you been in that occupation?

A. Seven years.

Q. How many years? A. Seven.

Q. Seven? A. Seven years.

Mr. Ricketts: May I see that Answer there?

Q. (By Mr. Ricketts): Mr. O'Neil, I will call your attention to the Answer that has been filed by the Defendant, the Franklin Life Insurance Company, a corporation, in a certain action now pending in the United States District Court, Northern District of California, Southern Division, wherein Leeta A. Lloyd is plaintiff, and which is Action No. 34715. [4] I will call your attention—L will call your attention to the photostatic copy, Mr. O'Neil, of a policy of life insurance attached to

(Deposition of Jack O'Neil.)

that Answer, purporting to be a policy of life insurance issued by the Franklin Life Insurance Company on the life of Warren William Lloyd, and which policy is dated January 5, 1953. I will call your attention, Mr. O'Neil, particularly to the photostatic copy of application attached to that Answer. Mr. O'Neil, this application was filled out by you? A. Right.

Q. This is your signature? A. Yes.

Q. This is the signature of Warren William Lloyd, the applicant? A. Yes.

Q. When that application was signed by Warren William Lloyd, was there a receipt attached to that application bearing the same number as the application? A. Right.

Q. And did that receipt read as follows—I am now reading from a receipt:

“This receipt must not be detached unless settlement toward first premium is collected at time of application and shall operate as a binding receipt under conditions stated in Paragraph ‘First’ only.”

“Receipt.”

Then, Mr. O'Neil, I will call your attention to the fact that on the right-hand margin of this receipt we are talking about [5] there appears, or there appear the following words:

“This receipt to be detached by agent only when payment is received at time of making application.”

Mr. O'Neil, I will continue reading from the receipt.

(Deposition of Jack O'Neil.)

Mr. O'Neil, I will leave blank the parts of the receipt which are not printed:

“Received from \$...... in cash, \$...... and/or note, \$...... on account of the first premium on proposed insurance on the life of for which an application bearing a corresponding number is this day made to The Franklin Life Insurance Company.”

Mr. Petrie: Mr. Ricketts, I don't like to interrupt, but do you intend to read the entire receipt?

Mr. Ricketts: I do.

Mr. Petrie: I understand under this stipulation that we are reserving all objections as to admissibility until trial; however, I want to make it perfectly plain lest I waive my objection under the best evidence rule, under Rule 32(c) of the Federal Rules of Civil Procedure, that we would object to this line of questioning on that ground.

Mr. Ricketts: I am sure that the Court Reporter will note your objection, Mr. Petrie.

Q. (By Mr. Rickett): “First”—continuing from the receipt—“First. It is agreed that (1) if the entire first [6] premium stipulated in the policy issued hereon is paid to an authorized agent of the Company at the time of making this application and (2) if the Company shall be satisfied after investigation and medical examination, if a medical examination is required, that the proposed insured was, under the Company's rules and standards, an acceptable risk for the amount of insurance (not in

(Deposition of Jack O'Neil.)

Q. Is it not your usual procedure to use the form of receipt attached to the application?

A. It is.

Q. At the time that the application was signed by Warren William Lloyd—

Mr. Cunningham: And by yourself.

Q. (By Mr. Ricketts): —and by yourself, did you have with you a supply of other application forms? A. I did.

Q. May I finish the question, Mr. O'Neil?

A. Excuse me.

Q. I will start it over again.

At the time, Mr. O'Neil, that you and Warren William Lloyd signed the application, the photo-static copy of which I [9] have shown to you, did you have with you a supply of identical application forms and receipt forms of the kind that I have shown to you, being the application form attached to the Answer, and the receipt form which I have just finished reading to you? A. Yes.

Q. You had a supply of those at that time?

A. Yes.

Q. And they read identically, did they. Mr. O'Neil, with the application and receipt I have read to you this morning? A. Yes.

Mr. Ricketts: This is off the record here.

(Discussion off record.)

Q. (By Mr. Ricketts): Mr. O'Neil, the last question I asked of you, I said that I had read the application form. I mean the application form,

(Deposition of Jack O'Neil.)

copy, photostatic copy of which is attached to the Answer, which I have heretofore shown you here this morning in the course of this deposition. You understand that is the application form that I am referring to? A. Right.

Q. In asking you whether you had a supply of such forms on hand at the time that you and Mr. Warren William Lloyd signed this application?

A. Yes.

Q. And attached to those applications was a receipt form, is that correct? A. That's right.

Q. I will further call your attention, Mr. O'Neil, to the photostatic copy of the application which the Defendant has attached to its Answer in this case, and you will note on the [10] application form, this application, photostatic copy attached to the Answer, there has been delivered to the agent the sum of—is that \$12.57, or is that 59 cents?

A. Can't say.

Q. It is one of the two, isn't it, 12.57 or 12.59?

A. That's right.

Q. How was that figure arrived at; what does that 12.57 or 12.59 represent, Mr. O'Neil?

A. It represents a monthly premium, a monthly premium on the proposed policy.

Q. Was that \$12.57 then, Mr. O'Neil, at least equal to the full first premium on a monthly payment basis on the plan and class of risk and amount of insurance that Warren William Lloyd then applied for?

(Deposition of Jack O'Neil.)

A. As it turned out, I think it was more than the premium. I miscalculated.

Q. It was at least equal to it? A. Right.

Mr. Ricketts: You have any more questions?

Q. (By Mr. Ricketts): At the time that Warren William Lloyd signed this application, how long had you been representing Franklin Life Insurance Company, the Defendant in this case?

A. I would say approximately eight months, eight to ten months. I do not remember the exact date.

Q. Several months, you will testify?

A. Yes.

Q. And had you, prior to that time—that is to say, prior to the time of taking the application of Warren William Lloyd, [11] taken other applications for life insurance for the Franklin Life Insurance Company? A. Yes.

Q. And about how many would you say?

A. Oh, I have no idea.

Q. Twenty-five?

A. No, closer to—ten or fifteen.

Q. Ten or fifteen. And on those prior times, did you use this same form of application and receipt?

A. That's right.

Q. And you filled out the application and the receipt in each instance? A. Yes.

Q. And they were the identical ones that we have been talking about this morning?

A. Yes.

(Deposition of Jack O'Neil.)

Mr. Ricketts: That's all, Mr. O'Neil. Thank you.

Mr. Petrie: I have a few questions.

Cross-Examination

By Mr. Petrie:

Q. How was the payment of \$12.57 made, Mr. O'Neil?

A. Mr. Lloyd's note. He gave me a note for it.

Q. What did you do with that note?

A. I imagine I gave it back to him. I don't remember.

Q. After you received the note from Mr. Lloyd, did you keep that note in your possession or did you forward it with the application to the General Agent?

A. I kept it in my possession.

Q. Did you fill out this application in your office or [12] elsewhere?

A. No, in Mr. Lloyd's home.

Q. Were you using any form of receipt generally in your business at the time you filled out this application?

A. Yes, I have a regular receipt form in duplicate that I use for all business, all business transactions.

Q. Is it possible that you gave Mr. Lloyd a receipt from that general book, upon this occasion?

A. Could have been. I don't remember that instance.

Q. You have no recollection of just what kind of receipt you did give to Lloyd, is that right?

A. That's right.

(Deposition of Jack O'Neil.)

Q. How was the policy delivered to Lloyd?

A. I delivered it.

Q. At the time that you delivered the policy to Lloyd, did you still have his note in your possession?

A. I don't remember; probably I had it with me.

Q. At the time you delivered the policy to him, was any payment of premium made to you?

A. At that time, yes, he gave me a check.

Q. What did you do with that check?

A. I turned it over to the General Agent.

Q. Was that the first premium payment that you forwarded to the General Agent? A. Yes.

Mr. Petrie: I have no further questions.

Mr. Ricketts: No further questions, Mr. O'Neil.

[Endorsed]: Filed January 9, 1956. [13]

In the United States District Court for the Northern District of California, Southern Division

No. 34715

LEETA LLOYD,

Plaintiff,

vs.

THE FRANKLIN LIFE INSURANCE COMPANY, a Corporation,

Defendant.

Before: Hon. Edward P. Murphy, Judge.

REPORTER'S TRANSCRIPT

Partial Opening Statement for Plaintiff

Tuesday, February 21, 1956

* * *

The Court: Now, counsel, I want to interrupt you. You have been taking a lot of time. You have prepared a very elaborate memorandum here. I am perfectly capable of reading the cases that are cited in support of your argument; but I am going to get back now to what I think is essential in this case, and that is whether or not you, as plaintiff, concede that Lloyd requested that the policy be dated January 1, 1953, regardless of who wrote it on the application. Do you concede that?

Mr. Ricketts: I concede that it was there, your Honor. I can't do anything else. The photostat shows it.

The Court: All right. You don't need to read all these cases to me, because I haven't the time to listen.

Mr. Ricketts: O.K.

The Court: I will read them myself in passing upon these motions, but that seems to me to be essential in this case as to whether you concede that Lloyd requested the policy be dated January 1, 1953, regardless of who wrote it on the application. You say you do concede that?

Mr. Ricketts: Yes, your Honor; we can't avoid that.

* * *

[Endorsed]: Filed April 6, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for appellant and appellee:

Excerpt from docket entries.

Complaint.

Answer of Defendant with photostat copy of policy of insurance attached.

Request of Plaintiff for Admissions by Defendant.

Reply of Defendant to Request for Admissions.

Request of Defendant for Admissions by Plaintiff.

Reply of Plaintiff to Request for Admissions.

Motion of Defendant for Summary Judgment with (a) Affidavit of R. A. Frederick, and (b) Copy of Policy of Insurance attached.

Request of Plaintiff for Admissions by Defendant and Demand for Production of Agent's Confidential Report.

Deposition of Jack O'Neil.

Reply of Defendant to Request for Admissions.

Motion of Plaintiff for Summary Judgment.

Affidavit of George E. Hatmaker with photostat copy of premium card.

Affidavit of Jack O'Neil with photostat copies of Application for Insurance and Exhibits B and C.

Order Granting Motion of Defendant for Summary Judgment and Denying Motion of Plaintiff. Judgment.

Notice and Motion by Plaintiff to Vacate Judgment, with memorandum of Points and Authorities Attached.

Copy of Notice by Office of Clerk of Entry of Judgment.

Notice of Appeal by Plaintiff, filed March 27, 1956.

Order Extending Time to Docket Record on Appeal.

Order Denying Motion to Vacate Judgment.

Notice of Appeal by Plaintiff, filed May 7, 1956.

Appeal Bond in sum \$250.00.

Appellant's Designation of Record on Appeal.

Appellee's Designation of Record on Appeal.

Reporter's Transcript of Portion of Opening Statement for Plaintiff, Feb. 21, 1956.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 24th day of May, 1956.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15142. United States Court of Appeals for the Ninth Circuit. Leeta A. Lloyd, Appellant, vs. The Franklin Life Insurance Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: May 24, 1956.

Docketed: May 29, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Pursuant to the provisions of Rule 17(6) Appellant files this concise statement of points on which she intends to rely:

1. On December 6, 1952, Warren William Lloyd signed an application for a policy of life insurance on printed form prepared by appellee. The application, solicited by appellee's agent, Jack O'Neil, likewise signed by O'Neil, acknowledged receipt on that date of applicant's promissory note (\$12.57) for a full month's premium. A coupon receipt was attached to the application which made insurance coverage commence not later than December 11, 1952—date of the medical examination of applicant.

Appellee has conceded a receipt was given on form prepared by it. Agent O'Neil testified (deposition) that he might have given the same form of coupon receipt from another of appellee's applications.

Lloyd passed the medical examination on December 11, 1952.

In paragraph numbered 25 of the application, which contained the printed instruction, viz.: "Use this space for special requests," there appears the hand-lettered notation: "Date policy Jan. 1, 1953."

Policy issued to Lloyd was dated January 5, 1953, and provided, "First Policy Year Begins January 1, 1953"; also that recovery thereunder would be limited to premiums paid if insured died by suicide "within two years from date of issue." Insured died by suicide December 21, 1954.

Policy provided for annual premium of \$136.63 but upon delivery parties agreed upon quarterly premiums.

2. As the coupon receipt attached to the application made coverage commence December 11, 1952, coverage was not deferred to January 1, 1953, by reason of request, in box numbered 25 of the application, to "Date policy Jan. 1, 1953."

3. A full, first month's premium was paid by the promissory note given by insured on December 6, 1952.

4. "Date of issue" as used in the suicide clause means date when coverage commenced.

5. To construe request of applicant as to dating policy Jan. 1, 1953, so as to make commencement of coverage nearly a month later than date of application and giving of promissory note for full month's premium, would have the effect of giving appellee a premium without any consideration or insurance contract obligation on appellee's part.

6. Applicant was entitled to receive from appellee's agent the company's form of coupon receipt attached to the application when applicant gave his

promissory note. The appellee cannot derive any advantage from the failure of its agent to give the receipt.

7. The coupon receipt attached to the application made coverage commence on December 11, 1952, date of medical examination. Applicant's suicide on December 21, 1954, was more than two years later.

8. The coupon receipt attached to the application is a cover note. It is a contract of insurance with coverage commencing December 11, 1952.

9. The words in box 25 of the application, to wit: "Date Policy Jan. 1, 1953," should be construed so as to preserve the right, evidenced by the promissory note and coupon receipt therefor, of applicant to have insurance coverage commence on December 11, 1952. The premium paid by promissory note on December 6, 1952, applied to the short-term coverage for the period December 11, 1952, to the date of delivery of the policy.

10. Any doubts, inconsistencies or ambiguities in the construction of the insurance contract must be resolved in favor of the insured and against the insurance company. This rule is applicable to the question of the date of commencement of insurance coverage.

11. The interim coverage given by the cover note commencing December 11, 1952, and the coverage which the policy says begins January 1, 1953, constitute a single contract. The application and the

policy are to be construed together as parts of the same contract.

12. California Insurance Code Section 10115 is applicable. Its interim coverage provisions cannot be waived. One of its purposes is to provide interim coverage for the benefit of the insurance contract beneficiary who usually does not, and in this case did not, participate in the negotiations for the contract of insurance.

13. California Insurance Code Sections 382 and 383 are applicable.

Dated: San Francisco, California, June 4, 1956.

/s/ NEIL CUNNINGHAM,

/s/ C. W. RICKETTS,

Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed June 4, 1956.